

HOUSE BILL REPORT

E2SHB 1415

As Passed House:

March 10, 2005

Title: An act relating to impacts of commercial passenger vessels on the marine waters of Washington.

Brief Description: Managing impacts of commercial passenger vessels on marine waters.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Dickerson, B. Sullivan, Dunshee, Williams, Hunt, Eickmeyer, Chase, Sells and Hasegawa).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/4/05, 2/15/05 [DPS];

Appropriations: 2/23/05, 3/3/05 [DP2S(w/o sub NREP)].

Floor Activity:

Passed House: 3/10/05, 94-0.

Brief Summary of Engrossed Second Substitute Bill

- Prohibits the release of certain wastewaters from commercial passenger vessels.
- Establishes a system for regulating the release of treated blackwater and graywater from commercial passenger vessels.
- Requires the operators of commercial passenger vessels to pay an annual operating fee, not to exceed \$4,000 per vessel per year, to the Department of Ecology based on the number of overnight passengers the vessel can carry.
- Provides an exemption for vessels with less than 250 overnight passengers until 2009 and specifies that exempted vessels are not required to pay the annual operating fee.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Dickerson, Eickmeyer, Hunt and Williams.

Minority Report: Do not pass. Signed by 5 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt and Orcutt.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Natural Resources, Ecology & Parks. Signed by 23 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Linville, McDermott, McIntire, Miloscia, Priest, Schual-Berke, Talcott and Walsh.

Minority Report: Do not pass. Signed by 5 members: Representatives Armstrong, Buri, Clements, Hinkle and Pearson.

Staff: Alicia Paatsch (786-7178).

Background:

Water quality laws

The Department of Ecology (Department) is the primary state entity responsible for regulating discharges into state waters. This regulation includes a requirement that any person disposing of liquid or solid waste into state waters is required to first obtain a permit from the Department, for which the Department is authorized to charge an annual fee.

A violation of the state water pollution laws can be enforced both by the Attorney General, and by the Department. The Attorney General is authorized to bring any appropriate action, including an action for injunctive relief. The Department has the authority to levy fines of up to \$10,000 per day for each violation. In addition, criminal charges can be brought against a person found guilty of violating the state's water quality laws. Civil penalties assessed by the Department may be appealed to the Pollution Control Hearings Board.

The Department is required to first notify a person violating the state's water quality laws in writing if the situation does not require immediate action. Once the notice is received, the violator has 30 days to file a report with the Department outlining the control measures that will be taken. If immediate action is deemed necessary by the Department, then an order or directive may be issued.

Memorandum of understanding

Prior to the 2004 cruise ship season, the Department entered into a memorandum of understanding (MOU) with the Port of Seattle, and the Northwest Cruise Ship Association. The latter signatory is a private organization that counts as members various cruise ship operators. The 2004 cruise season was the first year that the MOU was in effect, and it

applied to cruise ship traffic calling on Washington ports from April 21 until October 3. The MOU applies anytime a vessel that is operated by a member of the Northwest Cruise Ship Association is physically located in certain agreed-to waterways.

The MOU establishes industry oversight in three areas: wastewater management, solid waste management, and hazardous waste management. The bulk of the document, however, deals with wastewater management. Cruise ship operators have agreed in the MOU to not discharge any *untreated* wastewater or solid waste within waters subject to the MOU. In addition, the operators are prohibited from discharging sludge, which is the term given to residual solids that result from wastewater treatment, anywhere inside Puget Sound, along the American side of the Strait of Juan de Fuca, within 12 miles of the Pacific coast, or within a specified area to be avoided along the Olympic Coast National Marine Sanctuary. Cruise ships are allowed to discharge both blackwater and graywater in Washington waters as long as it is treated by an Advanced Wastewater Treatment System (AWTS), and certain conditions are met.

Some of the conditions that must be satisfied in order to discharge wastewater treated by an AWTS apply to all discharges in Washington waters, while other conditions depend on where the ship is located in relation to its port of call. Vessels not satisfying these requirements are expected to hold all graywater and blackwater in on-board tanks until the vessel leaves the waters subject to the MOU.

The MOU does not have an established expiration or sunset date. The current MOU was in place for the 2004 cruise season, and will remain in place for future cruise seasons unless either the State of Washington or the Northwest Cruise Ship Association decides to cancel its participation, and amendments to the MOU must be agreed to by all parties. The MOU signatories have agreed to meet at least once annually to discuss potential changes and to review the effectiveness of the MOU.

Summary of Engrossed Second Substitute Bill:

Prohibited discharges

Commercial passenger vessels, which are defined as vessels capable of providing overnight accommodations for at least 50 passengers for hire, are prohibited from releasing the following substances into the waters of the state:

- sewage sludge;
- oily bilge water beyond federal standards
- solid waste;
- biomedical waste;
- dangerous waste;
- *untreated* blackwater (sewage); and
- *untreated* graywater (non-sewage wastewater).

Treated wastewater-state approval for release

The operator of a commercial passenger vessel may release *treated* blackwater and *treated* graywater into waters where the activity would be otherwise prohibited if the vessel has been approved for the release by the Department. The Department is required to approve wastewater releases from commercial passenger vessels if the vessel has paid a mandatory annual operating fee and can demonstrate that the released blackwater will receive an adequate level of treatment prior to release. Each commercial passenger vessel is required to be re-approved for wastewater releases annually.

The operators of commercial passenger vessels that are certified by the United States Coast Guard (USCG) for the continuous discharge of blackwater in Alaska are presumed to treat the wastewater released from the vessel at adequate levels if certain steps are taken by the vessel operator. If the Department does not notify the owner of a commercial passenger vessel certified for discharge in Alaska that their approval for discharge is not permitted in Washington within 60 days of the vessel operator submitting documentation, then the operator may presume permission to release treated wastewater in Washington.

Treated wastewater-requirements to be presumed adequate for release away from port

In order for commercial passenger vessels to be presumed adequate for wastewater releases by the Department, the owner or operator of the vessel is required to satisfy a number of conditions. These conditions vary depending on the vessel's proximity to its port. Operators of commercial passenger vessels that are moving at least six knots and are located at least one nautical mile from port may only release treated wastewater when complying with the following requirements:

- Once monthly samples are conducted of wastewater released from the vessel, the results of which are shared with the Department.
- A whole effluent toxicity test (WET) is conducted on the released wastewater.
- Test results required in other jurisdictions are shared with the Department.
- The Department staff is allowed to witness sampling procedures.
- The Department staff is permitted to conduct an annual inspection of the wastewater treatment system on the vessel.
- The Department is notified if material changes are made of the wastewater system.

Treated wastewater-requirements to be presumed adequate for release while berthed at port

When a commercial passenger vessel is at berth in port, or within one mile of its port, additional requirements must be satisfied before adequate wastewater treatment can be presumed. In addition to satisfying the requirements for release away from port, the operator of the vessel must also comply with the following:

- twenty-four hour continuous monitoring of the turbidity of the release is conducted;
- documentation is provided to the Department that all releases were disinfected;
- copies of all water quality tests are provided to the Department for the six months preceding the release; and
- documentation is provided to the Department regarding the vessel's capability to monitor the release and shut down the release if the system malfunctions.

Emergency situations

Commercial passenger vessels are permitted to release any substances, including untreated graywater and blackwater, if the release is done to secure the safety of the vessel or to protect a life at sea.

Annual operating fee

The operator of a commercial passenger vessel is required to pay an annual operating fee prior to releasing treated wastewater. The amount of the fee is established each year by the Department, and may not exceed \$4,000 per vessel per year. The fee set by the Department must be based on the number of overnight accommodations available on the vessel. All fees are deposited into the newly created Commercial Passenger Vessel Enforcement Account.

Exemptions

Commercial passenger vessels with less than 250 passengers can apply for an exemption from the Department until December 31, 2009. In 2008, the Department must investigate wastewater technologies and recommend whether the exemption should be extended or modified.

Required reports

The Department is required to submit annual reports from 2005 until 2010 that summarizes, in lay terms, completed analyses on all water quality data collected from commercial passenger vessels and study the impacts of released blackwater on shellfish. In addition, the Department must submit a report in 2007 that concludes if the limitations on blackwater releases by commercial passenger vessels are adequate to protect water quality.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 2006.

Testimony For: (Natural Resources, Ecology & Parks) (In support) The MOU between the cruise industry and the state has been in effect for one season now, and the results have been satisfactory. However, by codifying the MOU the state gains three main benefits: certainty over future changes, expanded coverage over vessels that are not covered by the MOU, and enforceability.

This bill will protect marine resources and protect the economy. Cruise lines bring economic benefits, but so do fishers, the shellfish industry, and the aquaculture industry. These economic benefits are at risk from water pollution. The federal standards for blackwater are not strong enough to protect water quality, and tests in Alaska have shown that on-board wastewater treatment often does not work correctly.

The MOU is a preferred route, but many in the industry can accept legislation, and this approach is reasonable. The various interests have worked over the summer and fall to produce a bill that is close to one that everyone can accept.

The fees in the bill are appropriate because the general taxpayers should not have to pay to ensure that a few actors are not polluting the waters of the state.

(With concerns) Oily bilge water is regulated under strict guidelines through both international and federal law, so it should not be included in the state's regulations. Also, the definitions should be cleared up so that treated graywater can be released. Some provisions in the bill are too prescriptive. Giving rulemaking discretion to the Department may be a better way to go.

The industry would prefer a federal law instead of port-to-port differences in regulations. There are concerns that elements in the bill may conflict with federal law, but where those distinctions lie are unknown.

The machinery for treating blackwater works, but does not fit on smaller vessels like the ones that take tourists up and down the Columbia River. These small vessels cannot comply with the bill as proposed, and Washington should follow Alaska's lead in making provisions for the smaller vessels.

Testimony For: (Appropriations) The states of Alaska and California have passed significant cruise ship legislation and as you know Washington is experiencing an expanding cruise ship industry. Last year the cruise ship industry entered into a memorandum of understanding (MOU) with Ecology and this bill just codified that MOU. We want to do this so the MOU is enforceable. The amendment will lower the cost of the fiscal note and cruise ships will cover the costs of the program. There is an exemption for small vessels and we may also streamline to process to reduce the cost to Ecology. There was some sticker shock to the fiscal note as we were expecting it to be closer to \$50,000, which was the cost to Ecology under the MOU. Thanks to the cruise industry for coming back to the table to protect marine waters. Alaska has a fee schedule to cover the cost of their program that is nearly identical to this one.

(With concerns) I represent small cruise ships with 250 passengers or less and we believe that this bill will probably throw small cruise ships out of the state. Our vessels are Seattle based and cruise the Puget Sound and the Columbia and Snake rivers. The problem is that the bill sets environmental standards that we cannot meet and this will put us out of business. We were not part of the memorandum of understanding between large cruise ships and Ecology. The bill says that we may get an exemption but the director of the Department of Ecology may get rid of that exemption any day. Alaska gave us an exemption and so should Washington. The fees in the bill have a \$4,000 cap for large vessels but we would pay the rest.

Testimony Against: (Natural Resources, Ecology & Parks) None.

Testimony Against: (Appropriations) None.

Persons Testifying: (Natural Resources, Ecology & Parks) (In support) Representative Dickerson, prime sponsor; Chris Wells, Washington Public Interest Research Group; and Bruce Wishart, People for Puget Sound.

(With concerns) Terry Finn, Port of Seattle; Joe Daniels and Nick Schowengerdt, Holland America Lines; Melodie Selby, Washington State Department of Ecology; and Eric Johnson, Washington Public Ports Association.

Persons Testifying: (Appropriations) (In support) Representative Dickerson, prime sponsor; and Chris Wells, Washington Public Interest Research Group.

(With concerns) Joe Daniels, Holland America Lines; Randy Ray, Lindblad Expeditions; and Melodie Selby, Department of Ecology.

Persons Signed In To Testify But Not Testifying: (Natural Resources, Ecology & Parks) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.